In the High Court of Judicature at Madras

Dated: 07/08/2002

Coram

The Honourable Mr. Justice A.K. RAJAN

Crl. Appeal No. 618 of 1995 and Crl.Appeal No.620 of 1995

1. Marimuthu
2. Karunakaran Appellants in Crl.A.No.618/1995
Anjalai Appellant in Crl.A.No.620/1995

-Vs-

STATE
by The Inspector of Police
Pennadam Police Station,
Vallalar Division,
Cuddalore. Respondent in both the appeals

Appeals filed under Section 374 of Code of Criminal Procedure
against the judgments of the Sessions Judge, South Arcot Vallalar Division,
Cuddalore dated 25.07.1995 in S.C. Nos. 47 of 1995 and 20 of 1995,
respectively, convicting the appellants/accused and sentencing them to undergo
rigorous imprisonment for 5 years for an offence under Section 304 (ii) IPC
and to undergo rigorous imprisonment for one year for an offence under Section
201 IPC, both sentence to run concurrently.

!For appellants : Mr. A. Padmanabhan

^For respondent : Mr. V. Srinath
APP

:C O M M O N J U D G M E N T

Originally, a case was committed against all the three
accused under one case. A1 was charged for an offence under Section 302 and
201 IPC and A2 and A3 were charged for an offence under Section 201 IPC. The
trial Court also framed charges. But later the Sessions Court split up the
case and numbered as two sessions cases. One for the offence under Sections
302, 302 read with 201 IPC and the other case only for the offence under
Section 201 IPC. The trial Court confirmed the accused not guilty of offence
under Section 302 IPC but convicted under Section 304 (II) IPC. In the other
case it convicted both the accused under Section 201 IPC. Aggrieved by the
conviction and sentences, all the three have filed these two appeals.
2. Since the facts are one and the same, and the witnesses
also speak the same points, both the appeals were heard together and common

judgment is pronounced.
3. Marimuthu and Karunakaran are the appellants in C.A.No. 618 of 1995 and Anjalai is the appellant in C.A.No. 620 of 1995. For the sake of convenience, the appellants are hereinafter referred as A1 to A.3. A1 Anjalai is the mother-in-law, A2 Marimuthu is the father-in-law, and A.3 Karunakaran is the husband of the deceased Maheswari. According to prosecution A1 caused the death of Maheswari by hitting her on the temple using a kj;J (wooden house hold article used for grinding dhall). A2 and A3 wanted to screen the offence and the offender, and, therefore, hung the dead body from the roof and thus committed the offence stated above.

4. A complaint was filed against the accused and a case was registered in Crime No.159 of 1992, and charges were framed for an offence under Section 302 IPC against one accused and 201 IPC read with Section 302 IPC against other two accused. But the trial Court has split up the case into two sessions cases and framed charges separately. Evidence of the same witnesses recorded twice and two separate judgments were rendered and two appeals were filed. No appeal was filed by the State against the splitting up of the case.
5. To prove the case of prosecution, the prosecution examined P.Ws.1 to 15 and marked Exs. P.1 to P.16 as well as M.O.1 in both the Sessions cases.

6. The Village Administrative Officer of P.Poovannore village, P.W.2 states that on 23.5.1992, at 11.00 p.m one Subramaniam, Manickavelu and Veeramani of T. Agaram village came to his residence and told that one Maheswari died due to hanging. Since the place of occurrence was 10 k.m. away from his residence, and due to lack of transport, he did not go to the place of occurrence at that time. He went to Irulampatti where the occurrence took place, on the next day ie., on 24.05.1992 at 6.00 a.m and he saw the dead body of the deceased Maheswari in the pial. He enquired the accused and others there. They told that the deceased Maheswari hanged herself using her sari. Then he prepared a complaint, went to the Pennadam Police Station at 9.00 a. m. and presented the complaint to the Sub Inspector and the police registered a case and prepared First Information Report Ex.P.1. Then he returned to the scene of occurrence. The Revenue Divisional Officer of Virudhachalam and the Deputy Superintendent of Police were conducting investigation.

7. Panjalai, a resident of Irulampattu village knows the accused and the deceased Maheswari was examined as P.W.1. She has stated that on the date of occurrence, she was returning from the water tap, fetching water at 4.00 p.m while she was crossing the house of A.1, she saw A.1 having rice in her hands, scolding the deceased Maheswari for not cooking food; that on hearing this P.W.1 asked the deceased Maheswari, to cook and so saying she left the place and thereafter, she left to Neyveli. P.W.3, Thillaivanam, a resident of T. Agaram would state that he knows the accused and the deceased Maheswari, that on the date of occurrence at 5.00 p.m when he and one Pazhamalai of his village were coming to Irulampatti village to see one Pari in connection with purchase of a cow, P.W.4, Malliga and one Annathanam were following them. When they were nearing the house of the accused, there was

altercation between the deceased and A.1. A.1 was having churning stick (kj;J) in her hand. She pulled the tuft of the deceased Maheswari and beat the deceased on her head with the churning stick. Maheswari fell down and fainted. They pulled Maheswari inside the house. Then they left that place.
8. P.W.4, Malliga, knows the accused and the deceased Maheswari; She along with one Annadhanam went to Pennadam to purchase rice and as the amount was not sufficient, they intended to see the deceased, whose husband borrowed Rs.100/- earlier from P.W.4. At that time P.W.3 and one Pazhamalai were going before them. When they were nearing the house of Maheswari, there was some altercations between the deceased and A.1. At that time, it was 5.00 p.m. P.W.4 saw A.1, pulling the tuft of Maheswari and beating her with churning stick on her head. Maheswari cried. A.1 again beat her and she fell down and fainted. A.2 and A.3 took the deceased Maheswari inside the house. After seeing the incidents, P.W.4 left the place and returned to her village.

9. P.W.5, the doctor conducted post mortem on the dead body of the deceased Maheswari, on 25.5.1992 at 12.30 p.m. on the basis of requisition Ex.P.2 given by Revenue Divisional Officer of Virudhachalam. Ex.P.4 is the Post mortem Certificate wherein it is stated as follows:

"Skin peeled of from the neck back of both shoulders, Gluteal regions and in the lower limbs below the knee joints. Both eye balls protruded from the socket. Mouth opened. Tongue protruding. Dark coloured blood discharging from the nostrils and from both the ears. Uterus protruding from the vagina. Rectum protruding from the anus. Hyoid bone is intact. Both lungs dark colour. Heart empty. Liver congested 1400 gms. Spleen dark colour. Stomach empty. Intestines distended with gas. Bladder empty. Uterus non-pregnancy. Ribs normal. Spinal column intact. On opening the scalp, dark red coloured clot found on the right temporal region. Depressed fracture of right temporal bone was present. Covering of the brain intact. On opening the covering liquified brain matter coming out."

He sent the viscera for chemical analysis. Ex P.3 is the report of the chemical analyst. The doctor has opined that the deceased would have died of haemorrhage and shock due to injuries to the skull bone 36 to 48 hours prior to post mortem examination.

10. P.W.6 Manickavelu, a resident of T. Agaram, would state that he knows both the accused and the deceased Maheswari; that on 23.5.199 2 at 6.00 p.m the father of the deceased came to his house and told that his daughter Maheswari died. P.W.6, and P.W.7, the brother of the deceased, went to Irulampatti. P.W.6 saw the deceased Maheswari hanging inside the house; that blood was oozing from her head, ears and nose. There was an injury on the head. They went to see the Village Administrative Officer to enquire about the matter. When they went there at 7.00 p.m they did not find the Village Administrative Officer in his place; thereafter at 11.00 p.m they again went to the house of P.W.2 and informed him about the death of Maheswari; P.W.2 came to the scene village on the next day at about 6.00 or 7.00 a.m. After seeing the dead body P.W.2 went to Pennadam Police station to give a complaint.

11. P.W.7 Subramani, the brother of the deceased, would state that the deceased was married 4 years prior to the date of occurrence to A.3. At the time of marriage, the parents of deceased gave her five sovereigns of jewels, a cow, silver anklets worth Rs.1000/-, tailoring machine and ¼ cents of land as Sreedhana. One year after their marriage, she gave birth to a female child; A1 used to quarrel with the deceased and frequently, she came to her parents' house and her parents used to console her and send her to her mother-in-law's house. One year prior to the date of occurrence, her right hand became senseless on account of an accident. One Arputharaj informed him about the death of Maheswari. When they reached the house of the accused, they saw the dead body on the pial of house. Suspecting her death, they approached P.W.2 who gave complaint to the Pennadam Police Station. P.W.7 saw injury on the head of the deceased and blood was oozing from nose and ears. P.W.8 the mother of the deceased would corroborate the statement of P.W.7. P.W.9 Madhiyazhagan, the Village Menial, would state that on 24.5.1992 at 5.00 p.m. the Deputy Superintendent of Police inspected the scene of occurrence and prepared Ex P.7 observation mahazar. P.W.11, the Sub Inspector of Police would state that on 24.5.1992 at 9.00 a.m. when he was in charge of Pennadam Police Station, P.W.2 gave Ex.P.10 complaint. On the basis of Ex. P.10, he registered a case in crime No. 159 of 1992 and prepared printed First Information Report, Ex.P.1, and he sent the copy of the same to the Revenue Divisional Officer through Mr. Selvaraj, Constable of Pennadam Police Station and also to the police officials.

12. P.W.12, the Revenue Divisional Office on receipt of Exs.P.1 and P.10, through P.W.11, went to the scene of occurrence on 24.5.1992 and held inquest on the dead body of Maheswari between 3.00 p.m. and 5.00 p.m in the presence of witnesses and prepared Ex.P.11 inquest report. Ex.P.6 is the statement of P.W.8; Ex.P.12 is the statement given by one Maya; Ex.P.13 is the statement of one Ilavarasan recorded by him. Thereafter, he gave Ex.P2 requisition to the doctor to conduct post mortem.

13. The Deputy Superintendent of Police P.W.13, received First Information Report on 24.5.1992 through P.W.11 went to the scene of occurrence and prepared observation mahazar Ex.P.7 in the presence of witnesses; He drew a rough sketch Ex.P.14; He took up the matter for investigation and received report Ex.P.15 from the Revenue Divisional Officer.

14. Learned counsel for the appellants argued that there is absolutely no evidence to prove that A1, beat the deceased and there is no evidence to prove that the body was made to hang for the purpose of concealing the evidence. Learned counsel further pointed out that P.Ws. 3 and 4 were examined as eye witnesses and whose evidence was believed for the purpose of arriving at the conclusion that they have seen the occurrence when A1 beat the deceased; Further, P.W.8, the mother of deceased has stated that P.Ws. 3 and 4 were coming along with them; On hearing the news that her daughter was dead, she came to the village where her daughter died, along with P.Ws. 6 and 7; In the cross examination she admits that when she went to see her daughter, P.Ws. 2,3 and some others, accompanied her and along with them she also went and saw the body; When she examined those persons by the side of the dead body as to how her daughter died, they never stated anything; P.Ws. 3, 4 and 6 were

there throughout the night besides the dead body; She thought that they did not know how her daughter died when Deputy Inspector of Police as well as Inspector of Police, examined them. Learned counsel submitted that P.Ws. 3 and 4 were present where the dead body was laid; after the death P.W.3 accompanied but P. W.8 the mother of the deceased did not tell anything to the Investigating Officer or to the Revenue Divisional Officer P.W.12 as to who saw the incident which took place on the previous day. That is, P.W.3 or 4 did not tell anything to P.W.8 they were examined by police after one week, that have stated to the Investigating Officer that they saw the deceased being beaten by A1, in the circumstances that evidence cannot be accepted.

15. The argument of the learned counsel for the appellants has force. None of the witnesses have stated that they have seen A1 beating the deceased; It is only P.Ws. 3 and 4 who say that they saw A1 beating the deceased; these witnesses are not residing in the scene village but they are residing in a far off place and the reasons given by them for coming to the village at the time of incident, is unbelievable. They are only chance witnesses, if at all; their evidence cannot be believed at all when they did not tell anyone for one week. P.W.8, the mother of the deceased, has stated that P.Ws. 3 and 4 were present through out the night and they were beside the dead body; when she enquired about the cause of death of her daughter, nobody said anything. It is only after the Deputy Superintendent of Police suspected that it is a case of murder, the Inspector of Police altered the offence; only when he examined P.Ws. 3 and 4 one week after the incident they told the Investigating Officer. Therefore, their statements, that they saw the deceased being beaten by A.1, to the Inspector of Police, cannot be given much importance.

16. According to the witnesses, the body was hanging till 5.00 a.m., that is, till the Village Administrative Officer came to the spot. The witnesses stated that the body was hanging by a rope (made of coconut fibre) but the Village Administrative Officer said that the deceased was hanging by a sari; neither the rope nor sari has been seized and marked as a material object. But the only M.O. marked is the churning stick. If really the body was found hanging and brought down by some other person, the rope or sari should have been seized and produced before the Court. Further, the person who brought the dead body down should have been examined. But in this case, no such witnesses has been examined. Taking into consideration of the totality of evidence, it is very difficult to accept the evidence of P.Ws.3 and 4. Therefore, there is absolutely no evidence to prove that A1 beat the deceased with M.O.1. Further the case of the prosecution that the body was hanging in order to screen the offence of murder, has no evidence at all. Even the post mortem also does not reveal any external injury on the body of the deceased, like rope mark etc. on the dead body. Really if the body was hanging, the rope mark should have been found when autopsy was conducted by the doctor. In the absence of any such mark, it is not proved beyond doubt that the body was hanging. There is absolutely no evidence to hold that the body was made to hung by the accused. Therefore, there is no evidence to prove the offence punishable under Section 201 IPC. Hence, the conviction of the accused under Sections 304 (II) and 201 IPC are liable to be set aside as the offence is not proved beyond any reasonable doubt.

17. It is true that the deceased died due to injuries sustained by her and the doctor also deposed that the death would have been instantaneous, after receiving the blow. But there is no evidence either ocular or circumstantial, to hold that A1 caused the injury. Therefore, A1 cannot be convicted for the offence punishable under Section 304 II IPC.There is absolutely no evidence to prove that the appellants in C.A.NO.618/1995 did any act to screen the offence. Therefore, their conviction under Section 201 IPC cannot be sustained.

18. Before parting with this case, this court cannot but express its displeasure on the investigation. This is a case of death which occurred around 5.00 p.m. to 6.00 p.m.. Though the police station is just 2 kms. away from the place of occurrence, no complaint was given to the police. But instead, the Village Administrative Officer residing 10 km away was informed at 11.00 p.m. and thereafter, he informed the police only on the next day. Therefore, the police took up the matter for investigation after 16 hours of death. Only the Deputy Superintendent of Police has suspected that it is a case of murder. It is strange till then no one seems to have got any suspicion. P.W.2,the Village Administrative Officer gave the report to the police where he has also written that the husband of the deceased was not present in the village when the deceased died. It appears that this was added in the report only to protect the husband. Further, even P.W.12 has not suspected any offence, though there were very strong reasons to suspect. The very fact that no information was given by the police till the next day, almost 14 hours, should have been taken note of by P.W.12 and he should have conducted enquiry on that basis. Though F.I.R. was registered by 9.00 a.m the Revenue Divisional Officer conducts inquest only between 3.00 to 5.00 p.m.

19. When a person died in a house, the inhabitants are bound to explain how the person died. The arguments that the accused need not answer anything and he is entitled for right of silence is not available under such situation. There is absolutely no explanation from the accused as to how the deceased died. Even though the hut where the occurrence took place is surrounded by number of huts, no one has been examined to speak about the details of the occurrence. The Investigating Officer should have investigated the matter more seriously. Especially, this is being a case of murder of a woman of young age. At this stage, this Court is unable to do anything more than expressing its displeasure and disapproval, on the manner in which the death of a young woman has been dealt with by the investigating agencies. The accused who ought to have been convicted for the offence of causing the death of the woman, escapes because all the facts were not placed before the Court.

20. Before parting with case, this Court cannot ignore another distrussing feature in this case. The woman was dead between 5.00 and 6.00 p.m. On 23.05.1992. But body was removed to hospital for conducting autopsy only after 24 hours, only after 5.00 p.m. On 24.05.1992 F.N. 24 hours the body was exposed to nature during the hot summer without any protection. The autopsy was done only after 12.30 p.m on 25.5.1992. The mortuary in small town do not have any facility to preserve the body. Thus the body was exposed to nature – to decomposition – for more than 43 hours.

21. As held by the Supreme Court in the case of RAMASHARAN v. UNION OF INDIA (AIR 1989 SC 549) "...life in its expanded horizons today includes all that give meaning to a man's life including his tradition, culture...and protection of that...in its full measure would certainly come within the encompass of an expanded concept of Article 21 of the Constitution of India." Further, the Supreme

Court in the case of Pt. PARAMANAND KATARA, ADVOCATE v. UNION OF INDIA (1995 (3) SCC 248) has held that the "right to dignity and fair treatment" which is granted under Article 21 of the Constitution, is not only available to a living person but also to his body after his death. That is the "right to life" extends even to the body of a person after death till it is disposed of according to the culture and tradition. In this case according to the tradition and culture of the dead person, the dead person should be given a decent burial or should be cremated without delay; That is the body should not be allowed to decompose. But in this case, in order to protect the real offender from being punished, the complaint has been delayed. Thereafter investigation also not conducted with the swiftness it required. Had the inquest was over in time, the autopsy could have been completed before sun set on 24.05.1992. Since the body was exposed to nature for 43 hours the body was in a state of decomposition at the time when autopsy was started. Every human being is entitled for a decent disposal of his body after his death in accordance with his culture and tradition. Inordinate delay in sending the

dead body for autopsy, when required, mulitates against the right to dignity of human being; it amounts to violation of the provisions of Article 21 of the Constitution of India.

22. This Court hopes that in future such human rights and dignity of the dead person is not violated; The investigating agencies discharge their duty towards the dead with more promptitude.

23. In the result, the criminal appeals are allowed.

07.08.2002
Index : Yes
Internet : Yes
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To
1) The Sessions Judge, Cuddalore.
2) do. do. Thro' the Prl. Sessions Judge
South Arcot Vallalar District.
3) The Judicial Magistrate, Thittakudi, S.A.District.
4) do. Do thro' the Chief Judicial Magistrate, South Arcot District.
5) The Superintendent, Central Prison, Cuddalore.
6) The Public Prosecutor, High Court, Madras.

A.K. RAJAN.J.

Crl.A. Nos. 618
& 620 of 1995

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